

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
No.: 1:24-cv-17-LCB-JLW

JOHN DOE 1, et al.,

Plaintiffs,

v.

NORTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, et al.,

Defendants.

**DEFENDANTS' REPLY TO
PLAINTIFFS' RESPONSE TO
MOTION FOR LEAVE TO
CONDUCT DEPOSITIONS OF
PLAINTIFF DOES**

Defendants submit this Reply to clarify their position and to notify the Court of the parties' ongoing efforts to resolve any outstanding details concerning the Does' depositions. Accordingly, Defendants join Plaintiffs in respectfully requesting that the Court defer a ruling on Defendants' Motion for Leave to Conduct Deposition of Plaintiff Does until the parties can either come to an agreement or Plaintiffs' potential motion for protective order is fully briefed.

1. First, Defendants note for the record that Defendants' counsel contacted Plaintiffs' counsel in December 2024 about scheduling the Plaintiffs' depositions. Receiving no response, undersigned counsel followed up on January 9, 2025, requesting possible dates for the depositions and asking how to best facilitate scheduling.

2. Plaintiffs' counsel responded on January 22, 2025, raised two issues concerning deposition of the Does: (1) whether deposing them in the Cabarrus Detention Center, where they were housed, would relinquish their anonymity among facility staff, and (2) raised the issue seeking leave of court pursuant to Fed. R. Civ. P. 30(a)(1)(B) because

they are detained, are minors, and suffer from mental health conditions, indicating they were happy to discuss those issues further though at the appropriate time.

3. The depositions were pushed back because the discovery deadlines were extended on January 30, 2025, as a result of the Motion for Emergency Status Conference Plaintiff's counsel filed on January 21, 2025. The deadlines were again extended on April 3, 2025, as a result of the parties' Joint Motion to Modify Certain Case Management Deadlines filed on March 28, 2025.

4. Meanwhile, Defendants arranged for Plaintiffs to be relocated to a different detention facility to preserve their anonymity in anticipation of their depositions. On March 20, 2025, Defendants' counsel contacted Plaintiffs' counsel via email to revisit the conversation about deposing Plaintiffs. On March 25, 2025, Plaintiffs' counsel responded that they did not anticipate objecting to a request to depose the Plaintiffs, but believed Fed. R. Civ. P. 30(a)(2)(B) requires leave of court to take the Does' deposition.

5. Fed R. Civ. P. 30(a)(2)(B) provides that a "party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2) . . . if the deponent is confined in prison." While Defendants do not agree that Plaintiffs, who are currently housed in a detention facility, not a prison, fall under the parameters of Rule 30(a)(2)(B), Defendants filed the motion as discussed in light of Plaintiffs' representation that they would not object—meaning the certification required by Local Rule 37.1 was neither applicable nor necessary.

6. Regardless, Defendants have no objection to Plaintiffs' request to confer regarding Plaintiffs' depositions. In fact, counsel for the parties are scheduled to meet and

confer on Tuesday, May 6, 2025, at 3:00pm. Defendants will notify the Court if any issues remain unresolved following that conference.

WHEREFORE, Defendants respectfully request that the Court defer a ruling on Defendants' Motion for Leave to Conduct Deposition of Plaintiff Does until the parties can either come to an agreement or Plaintiffs' potential motion for protective order is fully briefed.

Respectfully submitted this the 5th day of May 2025.

JEFF JACKSON
ATTORNEY GENERAL

/s/ Mathew Tulchin
Mathew Tulchin
Special Deputy Attorney General
State Bar No. 43921
mtulchin@ncdoj.gov

Laura H. McHenry
Special Deputy Attorney General
State Bar No. 45005
lmchenry@ncdoj.gov

North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
Phone: 919-716-6900
Fax: 919-716-6763
Attorneys for Defendants